Compendium of Residential Care and Assisted Living Regulations and Policy: 2015 Edition

WISCONSIN

Licensure Terms

Assisted Living Facilities

General Approach

The state licenses, certifies, registers, and regulates four types of assisted living settings and programs, including adult day care.¹ The Wisconsin Department of Health Services, Bureau of Assisted Living, Division of Quality Assurance, regulates community-based residential facilities (CBRFs), residential care apartment complexes (RCACs), and adult family homes.

CBRFs are licensed based on: (1) size--small, 5-8 beds; medium, 9-20 beds; and large, 21 or more beds; and (2) class--whether residents are ambulatory, semiambulatory, or non-ambulatory, and able to mentally and physically respond to an electronic fire alarm and exit the facility without assistance or verbal or physical prompting. If serving more than one resident group, an applicant for a license must provide an explanation acceptable to the Department of how the resident groups are compatible with one another.

RCACs provide each resident with an independent apartment in a setting that must be home-like and residential in character. RCACs are not licensed or monitored; they only have to register with the Department. To be reimbursed by Medicaid, RCACs must be certified as being in compliance with all applicable federal, state, and local licensing, building, zoning, and related requirements, including the requirements of the Medicaid Community Waivers Manual.

Adult Foster Care. The Department also licenses adult family homes, which are private residences in which the care provider--whose primary domicile is this residence --furnishes care and maintenance above the level of room and board to 3-4 adults who are not related to the licensee. Homes serving 1-2 individuals do not need to be licensed but if they want to receive public funding, they are regulated by individual county Human Services departments. No more than 7 hours per week of nursing care per resident may be provided in this setting. *Regulatory provisions for adult family homes are not included in this profile but a link to the provisions can found at the end.*

¹ Wisconsin considers adult day care to be a type of assisted living.

This profile includes summaries of selected regulatory provisions for RCACs and CBRFs. The complete regulations are available online through the links provided at the end.

Definitions

Community-based residential facilities provide care, treatment, and other services to five or more unrelated adults who need supportive or protective services or supervision because they cannot or do not wish to live independently yet do not need the services of a nursing home or a hospital. CBRFs are limited to those who do not require care above intermediate nursing care or more than 3 hours of nursing care per week, unless there is a waiver approved by the Department.

CBRFs provide a living environment that is as home-like as possible and the least restrictive of each resident's freedom, and is compatible with the resident's need for care and services. Residents are encouraged to move toward functional independence in daily living or to continue functioning independently to the extent possible.

Residential care apartment complexes consist of five or more independent apartments, each of which has an individual, lockable entrance and exit; a kitchen, including a stove; individual bathroom, sleeping, and living areas; and provide residents up to 28 hours per week of personal, supportive, and nursing services that are appropriate to the needs, abilities, and preferences of individual residents. RCACs operate in a manner that protects residents' rights, respects resident privacy, enhances resident self-reliance, and supports resident autonomy in decision-making, including the right to accept risk.

An RCAC does not include a nursing home or a CBRF, but may be physically part of a structure that is a nursing home or CBRF.

Resident Agreements

Community-Based Residential Facilities. The resident agreement must be provided prior to move-in or within 5 days of an emergency admission. The agreement must cover the services provided; the basic daily or monthly rate; payment and refund policies; security deposits, entry fees, and bed hold fees (if any); and discharge policies.

Residential Care Apartment Complexes. A services agreement must include information about fees, the services that will be provided, optional services and their cost, and facility policies and procedures.

Disclosure Provisions

Community-Based Residential Facilities. A program statement must disclose the facility type (size and class); services provided; facility contact; employee availability, including 24-hour staffing patterns and the availability of a licensed nurse, if any; and whether an entrance fee is required. A copy of the resident's rights and house rules must be provided prior to and upon move-in.

A licensed facility that markets or otherwise promotes itself as providing specialized services, 24 hours per day, in a specialized unit, for residents with a diagnosis of Alzheimer's disease or other dementia, must complete a disclosure form. The regulations specify individuals with dementia as one of several specific groups that may be served and requirements for serving them. As part of the licensing process, facilities serving people with dementia must prepare a full description of the special needs of the residents to be served and the care and services to be offered.

Residential Care Apartment Complexes. Facilities must provide prospective residents a schedule of charges and fees for rent, meals, and services; and required deposits, refund policies, and notification procedures for fee increases.

Admission and Retention Policy

Community-based residential facilities can admit and provide services to individuals of advanced age, and those with dementia, developmental disabilities, mental health problems, physical disabilities, traumatic brain injury, AIDS, Alcohol and Other Drug Abuse, correctional clients, pregnant women needing counseling, and/or the terminally ill. CBRFs must ensure that residents of different ages, development levels, or behavior patterns, as identified in their assessment and individualized service plans (ISPs), are compatible.

Facilities may not admit or retain persons who: (1) are confined to bed; (2) are destructive to property or self; (3) are physically or mentally abusive to others, unless the facility has sufficient resources to care for such an individual and is able to protect the resident and others; (4) have physical, mental, psychiatric, or social needs that are not compatible with the CBRF resident group or with the care, treatment, or services offered by the CBRF; and (5) present an imminent risk of serious harm to the health or safety of the resident, other residents, or employees, as documented in the resident's record.

Facilities may not have more than four residents, or 10 percent of the licensed capacity, whichever is greater, who need more than 3 hours of nursing care per week, or who need care above intermediate level nursing care for more than 30 days, unless the facility has obtained a waiver from the Department or the Department's decision regarding the waiver request is pending.

Residential Care Apartment Complexes. Unless residents are admitted to share an apartment with a competent spouse or other person who has legal responsibility, facilities may not admit persons who have a court determination of incompetence and are subject to guardianship; have an activated power-of-attorney for health care; or have been found by a physician or psychologist to be incapable of recognizing danger, summoning assistance, expressing need, or making care decisions.

A facility may retain a resident who becomes incompetent or incapable of recognizing danger, summoning assistance, expressing need, or making care decisions, under the following conditions:

- Adequate oversight, protection, and services are provided.
- The resident has an appointed guardian, or an activated power-of-attorney for health care, or a durable power-of-attorney. The activated power-of-attorney for health care or durable power-of-attorney must, either singly or together, substantially cover the person's areas of incapacity.
- Both the service agreement and risk agreement are signed by the guardian and by the health care agent or the agent with power-of-attorney, if any.

Facilities may discharge residents for several reasons, including: the facility cannot meet their needs; they need more than 28 hours of services per week; their condition requires the immediate availability of a nurse 24 hours per day; their behavior poses an immediate threat to the health or safety of self or others; they refuse to cooperate in a physical examination; they refuse to enter into or revise, when needed, a negotiated risk agreement; or they are adjudicated incompetent, have an activated power-of-attorney for health care, or have been found to be incapable of recognizing danger, summoning assistance, expressing need or making care decisions by two physicians, or by one physician and one licensed psychologist who have personally examined the resident and signed a statement specifying that the person is incapable.²

Services

Community-based residential facilities must provide general services, including supervision, information and referral, leisure time activities, transportation, and health monitoring; resident-specific services, including personal care, activity programming for persons with dementia,³ independent living skills, behavior management, communication skills, and up to 3 hours of nursing care per week (unless hospice is involved); and medication assistance and administration.

 $^{^{2}}$ Some provisions in this and the two preceding paragraphs are contradictory; the state will clarify these provisions in 2015.

³ Structured activity programming must be integrated into the daily routines of residents with irreversible dementia.

Residential care apartment complexes must provide a minimum service package that includes housekeeping, access to medical services, personal services, including assistance with all activities of daily living; and nursing services, including health monitoring and medication administration. Services must be sufficient to meet the care needs identified in the resident service agreements, resident's unscheduled care needs, and to provide emergency services as needed 24 hours a day. The services provided--which include staff time attributable to providing or arranging supportive, personal, and nursing services, including nursing assessment, documentation, and consultation and standby assistance--cannot exceed 28 hours a week. Social, and recreational activities are not counted toward the 28-hour limit. Facilities may choose to provide services above the minimum required level and residents have the right to contract for or arrange for additional services outside the service agreement and above the 28-hour limit.

Service Planning

Community-Based Residential Facilities. Prior to admission, CBRFs must assess each resident's needs, abilities, and physical and mental condition. Reassessments must be conducted at least annually, and when residents have a change in needs, abilities, or condition. Upon admission, the CBRF must develop a temporary service plan to meet immediate needs, and a comprehensive ISP within 30 days after admission. The plan must specify which program services will be provided to meet the resident's needs as identified by the assessment and the frequency with which each service will be provided.

Residential Care Apartment Complexes. Prior to admission, the facility must conduct a comprehensive assessment to inform the development of a service plan and risk agreement. The assessment covers: physical health; functional limitations and capacities; medication and the ability to self-administer; nutritional status and needs; mental and emotional health; behavior patterns; social and leisure needs and preferences; strengths, abilities, and capacity for self-care; situations or conditions that could put the resident at risk; and the type, amount, and timing of services desired by the resident.

The risk agreement identifies situations or conditions known by the facility to arise from the resident's preferences that are contrary to the facility's advice, how they will be accommodated, alternatives offered to reduce the risk, the agreed upon course of action, and the resident's understanding and acceptance of responsibility.

Third-Party Providers

Community-based residential facilities may provide or contract for services. Residents may enter into contracts with outside providers as long as the contract agency complies with facility policies and procedures. **Residential care apartment complexes** may provide or contract for services to meet the care needs identified in the resident service agreement. Residents may contract for additional services not included in the service agreement, as long as the providers comply with applicable facility policies and procedures. Services arranged directly by an individual resident from a provider other than the RCAC must not count toward the limit on the amount of services provided by a facility.

A facility may not limit the amount of hospice care a resident receives or the amount of unpaid services provided by the residents' family or friends. A facility may not limit the amount of recuperative care which a resident receives, provided the recuperative care will not raise the total service level above 28 hours per week for more than 90 days.

Medication Provisions

Community-Based Residential Facilities. Residents may self-administer medications unless they have been found incompetent or do not have the physical or mental capacity to self-administer as determined by the resident's physician. When medication administration is supervised by a registered nurse (RN), practitioner, or pharmacist, the CBRF must ensure that these individuals coordinate, direct, and inspect the medication administration process and the medication administration system.

When medication administration is not supervised by an RN, practitioner, or pharmacist, the CBRF must arrange for a pharmacist to package and label a resident's prescription medications in unit dose. Injectables, nebulizers, stomal and enteral medications, and medications, treatments, or preparations delivered vaginally or rectally must be administered by an RN or by a licensed practical nurse (LPN) within the scope of their license, or by non-licensed employees if delegated by a licensed nurse in accordance with the state's practice standards for RNs and LPNs.

Any employee who manages, administers, or assists residents with prescribed or over-the-counter medications must complete training in medication administration and management prior to assuming these job duties.

Residential Care Apartment Complexes. Facilities can offer medication administration (giving or assisting residents in taking prescription and non-prescription medications in the correct dosage, at the proper time, and in the specified manner) and medication management (oversight by a nurse, pharmacist, or other health care professional to minimize risks associated with use of medications.) Medications can be administered by an RN or as a delegated task to unlicensed staff, under the supervision of a nurse or pharmacist.

Food Service and Dietary Provisions

Community-based residential facilities must provide at least three nutritious meals a day and a nutritious snack that meet the recommended dietary allowances based on current dietary guidelines for Americans, and must meet residents' special dietary needs. Therapeutic diets must be provided if ordered by a physician.

Residential care apartment complexes must provide meals and snacks.

Staffing Requirements

Community-Based Residential Facilities

Type of Staff. An administrator must be responsible for the management and day-to-day operation of the CBRF, and is responsible for the training and ensuring the competency of all employees, including *resident care staff* who provide direct care to residents.

Staff Ratios. No minimum ratios. Facilities must provide employees in sufficient numbers on a 24-hour basis to meet residents' needs as defined in their ISPs. At least one qualified resident care staff must be on-duty whenever one or more residents are present, and at least one qualified resident care staff must be on-duty be on-duty and awake if at least one resident in the CBRF needs constant or intermittent supervision or care, or if the evacuation capability of at least one resident is 4 minutes or more.

Residential Care Apartment Complexes

Type of Staff. Each facility must have a *service manager* who is responsible for day-to-day operations, including ensuring that the services provided are sufficient to meet resident needs and are provided by qualified persons; that staff are appropriately trained and supervised; that facility policies and procedures are followed; and that the health, safety, and autonomy of the residents are protected.

Staff Ratios. No minimum ratios. The number, assignment, and responsibilities of all staff must be adequate to provide all services identified in the residents' service agreements, including assisting residents with unscheduled care needs.

Training Requirements

Community-Based Residential Facilities. Before an employee performs any job duties, they must have orientation training regarding facility policies and procedures and job responsibilities. Minimum initial training consists of Department-approved training in medication management, standard precautions, fire safety, and first-aid. In addition, the facility must provide, obtain, or otherwise ensure adequate training for all employees in

a wide range of topics, including resident rights, reporting abuse, and challenging behaviors.

Resident care staff involved in certain tasks must have training in needs assessment of prospective residents, development of service plans, and provision of personal care.

The administrator and resident care staff must receive 15 hours annually of continuing education relevant to their job responsibilities. Additionally, all staff must have appropriate training about the physical, functional, and psychological characteristics of the populations they serve, including persons with dementia.

Residential Care Apartment Complexes. All facility staff must have training in safety procedures, including fire safety, first-aid, universal precautions, and the facility's emergency plan; and in the facility's policies and procedures relating to resident rights. Staff providing services to residents must have documented training or experience in: (1) physical, functional, and psychological characteristics associated with aging or likely to be present in the resident population, including persons with dementia, and their implications for service needs; (2) the purpose and philosophy of assisted living, including respect for resident privacy, autonomy and independence; and (3) assigned duties and responsibilities, including the needs and abilities of individual residents for whom staff will be providing care.

Provisions for Apartments and Private Units

Community-based residential facilities have both private and double-occupancy bedrooms with shared bathrooms. Small and medium facilities must offer one bathroom and shower facility for every eight residents. Large facilities must have one toilet, bath, and shower for every eight male residents and every eight female residents. Each facility must have at least one toilet, sink, and tub or shower for ten residents.

Residential Care Apartment Complexes. All units must be independent with a lockable entrance/exit. Multiple-occupancy of an independent apartment is limited to a spouse or a roommate chosen at a resident's initiative. The kitchen must be a visually and functionally distinct area of the unit. Microwave ovens may be used instead of stoves. The sleeping and living areas also have to be visually and functionally distinct but are not required to be separate rooms. Each apartment must have a bathroom that has floor-to-ceiling walls, a door, a toilet, a sink, and a bathtub or shower.

Provisions for Serving Persons with Dementia

Dementia Care Staff and Facility Requirements. No provisions identified.

Dementia Staff Training. CBRFs that serve persons with dementia must provide training within 90 days of employment, to include but not be limited to, the characteristics of persons with dementia and their specific service, medication, and treatment needs.

Background Checks

Community-Based Residential Facilities. At the time of hire, employment, or contract and every four years after, the licensee must conduct and document a caregiver background check. A licensee must not employ or contract with any person-or permit a non-client to reside at the CBRF--if the person has been convicted of certain crimes or offenses, or has a governmental finding of misconduct, unless the person has been approved under the Department's rehabilitation process.

Residential Care Apartment Complexes. Facilities must conduct a criminal record check with the Wisconsin Department of Justice, and with the registry for nurse aides, home health aides, and hospice aides for managers, service providers, and all staff who will have direct contact with residents.

Inspection and Monitoring

Community-Based Residential Facilities. Department licensing specialists inspect CBRFs every 2 years, via unannounced surveys, in response to complaints, and to determine if any noted deficiencies have been corrected.

Residential Care Apartment Complexes. The Department has the authority--but is not required--to inspect registered RCACs to determine compliance with regulatory requirements. Residents in registered facilities must be notified that the Department does not regularly visit or inspect them. However, the Department inspects RCACs in response to all complaints.

The Department conducts periodic inspections of RCACs that are certified as Medicaid providers every 2 years to determine compliance with certification requirements.

Public Financing

The Medicaid State Plan covers personal care services in certified RCACs and in CBRFs with 20 or fewer beds. The Elderly and Physically Disabled 1915(c) Waiver program, the Community Options 1915(c) Waiver program, and the Medicaid managed care 1915(b)(c) Family Care Waiver program for the aged and physically disabled cover services in RCACs, CBRFs, and adult family homes. The state-funded Community Option Program funds services only in CBRFs and adult family homes.

Room and Board Policy

The state provides a monthly Supplemental Security Income (SSI) exceptional expense (SSI-E) payment of \$95.99 to an SSI recipient who needs at least 40 hours of primary long-term support services each month, whose expenses are greater than the SSI-E payment level, and who lives in a licensed or certified adult family/foster home, a CBRF of 20 beds or less, or a certified RCAC.⁴

The state limits the amount that can be charged for room and board to Medicaid waiver participants to the SSI federal benefit plus the SSI-E payment (if any) less a personal needs allowance of \$45 a month, which is retained by the resident.

The state agency allows family supplementation to cover room and board, a private room, or for service enhancements that are not covered by the Medicaid payment.

Location of Licensing, Certification, or Other Requirements

The following Wisconsin Department of Health website has links to all of the regulations for the two types of assisted living regulations summarized in this profile. [January 16, 2015] http://dhfs.wisconsin.gov/bqaconsumer/AssistedLiving/AsLivindex.htm

Direct links to the regulations follow.

Wisconsin Statutes, Chapter 50, Subchapter 1: Care and Service Residential Facilities. [January 1, 2015] http://docs.legis.wisconsin.gov/statutes/statutes/50.pdf

Wisconsin Statutes, Chapter DHS 83: Community-Based Residential Facilities. [December 2011] http://docs.legis.wisconsin.gov/code/admin_code/dhs/030/83.pdf

Wisconsin Administrative Code, Chapter DHS 89: Residential Care Apartment Complexes. [January 2012] https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/89/II/24

Wisconsin Administrative Code, Chapter DHS 88: Licensed Adult Family Homes. [May 2011] <u>https://docs.legis.wisconsin.gov/code/admin_code/dhs/030/88/07</u>

Exceptional Expense Supplement for Members of Supplemental Security Income in Wisconsin. [November 15, 2014] https://www.dhs.wisconsin.gov/ssi/ssi-e.htm

⁴ The state also pays this supplement to individuals in other living arrangements.

Information Sources

Alfred C. Johnson Director Bureau of Assisted Living Department of Health Services

Phoebe Hefko Legal Services Developer/SHIP Director Wisconsin Department of Health Services Bureau of Aging and Disability Resources

COMPENDIUM OF RESIDENTIAL CARE AND ASSISTED LIVING REGULATIONS AND POLICY: 2015 EDITION

Files Available for This Report

FULL REPORT

Executive Summary	http://aspe.hhs.gov/execsum/compendium-residential-care-and-
	assisted-living-regulations-and-policy-2015-edition-executive-
	<u>summary</u>
HTML	http://aspe.hhs.gov/basic-report/compendium-residential-care-and-
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SEPARATE STATE PROFILES

[*NOTE*: These profiles are available in the full HTML and PDF versions, as well as each state available as a separate PDF listed below.]

Alabama	http://aspe.hhs.gov/pdf-report/compendium-residential-care-and-
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North Dakota	http://aspe.hhs.gov/pdf-report/compendium-residential-care-and- assisted-living-regulations-and-policy-2015-edition-north-dakota- profile
Ohio	http://aspe.hhs.gov/pdf-report/compendium-residential-care-and-
Oklahoma	assisted-living-regulations-and-policy-2015-edition-ohio-profile http://aspe.hhs.gov/pdf-report/compendium-residential-care-and- assisted-living-regulations-and-policy-2015-edition-oklahoma-profile
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